**DOCKET NO. 453-03-0688.M2**
**MDR Tracking No. M2-02-0972-01**

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| **_____.,** | **§** | **BEFORE THE STATE OFFICE** |
| **Petitioner** | **§** | |
| | **§** | |
| **VS.** | **§** | **OF** |
| | **§** | |
| | **§** | |
| **TRANSPORTATION INSURANCE** | **§** | |
| **COMPANY,** | **§** | |
| **Respondents** | **§** | **ADMINISTRATIVE HEARINGS** |

## DECISION AND ORDER

_____. (Claimant), an injured worker, challenges the decision of an Independent Review Organization (IRO) upholding the decision of Transportation Insurance Company (Carrier) to deny her request for a Chronic Pain Management (CPM) program. This decision finds that the evidence supports the medical necessity of a CPM program.

Administrative Law Judge (ALJ) Gary Elkins convened and closed a hearing on January 22, 2003. Claimant appeared *pro se* and was assisted by Texas Workers' Compensation Commission Ombudsman Juan Mireles. James Loughlin appeared on behalf of Carrier.

## II. DISCUSSION

In_____, Claimant suffered compensable injuries to her lower back and right shoulder when she fell from a chair. Following the accident, Claimant underwent myriad tests and treatments on numerous occasions involving many doctors. Over time, the sources of Claimant's pain expanded to include her entire body. Ultimately, based on the recommendations of some of her doctors, she requested a six-week CPM program. Carrier denied the request, which culminated in this proceeding before SOAH following the IRO's review and denial of a CPM program.

Claimant presented the following arguments in support of the proposed CPM program:

! She participated in a three-to-four week CPM program in early 2002 that was stopped short when Carrier refused to continue paying for the program. She feels that participation in a complete CPM Program would provide her with the effective benefits she was enjoying when her participation in the 2002 program was cut short.

- Up to fifteen doctors have recommended a CPM program.

- Her failures to complete earlier treatment regimens and programs, including a work hardening program and drug therapy, were attributable to negative side effects resulting from the treatments.

Carrier, together with its expert, Craig Dubois, M.D., presented the following reasons for opposing a CPM program:

- Despite Claimant's arguments that because her 2002 pain management program was helping her, she should have been allowed to participate in it for more than four weeks, it was not an interdisciplinary program like the one involved in this proceeding. Instead, it simply involved psycho-therapy and biofeedback.

- Because Claimant's reports of symptoms and pain remain unchanged, cover her entire body, and have been addressed with numerous attempts to treat her, a CPM program, which focuses on treating specific areas of the body, would not be the most efficacious and effective means of treatment.

- While a CPM program might possibly be successful, the difficulty would be in trying to keep track of and coordinate treatment of all affected body areas.

- Although Claimant's compensable injuries should have healed by now, there has been no concomitant change in her symptoms and levels of pain.

- Claimant does not appear to have actively participated in treatment programs made available to her or to have demonstrated she can carry a treatment program to fruition.

- The various doctors who have evaluated and treated Claimant appear to have exhausted treatment options. Consequently, they have recommended a CPM program as a last resort.

- Other treatment approaches, such as drug therapy, are very important to her treatment, and any adverse side effects from such a program can be minimized.

- Claimant exhibited a "disconnect" between her reported pain and her ability to function in an essentially normal manner.

- Because CPM programs are very expensive, granting Claimant's request in this proceeding would not be cost effective as required by law.

Not with standing the arguments urged by Carrier as evidencing lack of medical necessity for a CPM program, such factors can also be viewed as supporting such a program. In fact, even though

the Commission's Treatment Guidelines were abolished effective January 1, 2002, the Mental Health Treatment Guidelines offer some guidance on criteria that might be considered appropriate for referral to a CPM program. Among the types of behavior and circumstances that might indicate a need for such a program are the following:

- Diagnostic findings insufficient to explain the pain.
- Pain persisting beyond the expected tissue healing time.
- The existence of chronic pain linked to adverse interpersonal relationships that interfere with rehabilitation.
- The presence of physical or mental impairment greater than expected based on the diagnosed medical condition and treatment.

The evidence reveals that Claimant has not successfully completed some treatment programs and regimens aimed at addressing her physical pain and that various psychological and emotional hurdles might be impeding her rehabilitation. Nevertheless, it is these factors together with Claimant's continuing reports of pain that suggest a multi-disciplinary CPM program would be a reasonable approach to attempting to remedy the causes of her problems. The findings of at least two psychologists as well as several medical doctors support this conclusion. Consequently, the requested CPM program should be preauthorized.

## III. FINDINGS OF FACT

1. _____ (Claimant) suffered compensable injuries to her lower back and right shoulder resulting from a fall from a chair in_____.

2. At the time of Claimant's injury, her employer held workers' compensation insurance coverage through Transportation Insurance Company (Carrier).

3. Claimant seeks preauthorization for a chronic pain management program.

4. Carrier denied Claimant's request for preauthorization.

5. Upon receiving the Medical Dispute Resolution Findings and Decision denying any Claimant's preauthorization request, Claimant timely requested a hearing before the State Office of Administrative Hearings (SOAH).

6. The SOAH hearing convened and closed on December 22, 2002.

7. Notice of the hearing was sent to the parties on October 17, 2002. The notice informed the parties of the date, time, and location of the hearing, a statement of the matters to be considered, the legal authority under which the hearing would be held, and the statutory provisions applicable to the matters to be considered.

8. Following her compensable injury, Claimant underwent myriad tests and treatments on numerous occasions involving many doctors.

9. Despite the numerous medical treatments, Claimant's reported pain levels generally have not improved.

10. A July 13, 1999, MRI revealed a moderate-size annular disc bulge at the L1-L2 level of the spine, with disc material effacing the anterior surface of the thecal sac attenuating the spinal canal; disc dessication and degeneration at level L1-L2; and mild bilateral facet joint sclerosis and hypertrophy at level L5-S1.

11. Medical tests approximately ten months after Claimant's right shoulder injury suggested a rotator cuff tear to the same shoulder.

12. Claimant exhibits a somatoform pain disorder associated with both psychological factors and pain symptoms associated with her compensable injuries.

13. Claimant exhibits an adjustment disorder with a depressed mood.

14. Claimant exhibits an anxiety disorder.

15. Claimant exhibits premorbid traits or a coping style affecting her response to treatment and recovery from her injury.

16. Claimant exhibits pain behavior and functional limitations that are disrupting her daily living activities.

17. Claimant has not participated in a comprehensive, inter-disciplinary chronic pain management program.

18. Claimant's participation in a comprehensive inter-disciplinary chronic pain management program is a logical step in treating her compensable injury.

## IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. ch. 401 et seq.

2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN§ 413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.

3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.

4. As Petitioner, Claimant has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h).

5. Claimant demonstrated that the requested chronic pain management program is medically necessary to treat her compensable injuries.

6. Claimant's requested preauthorization for a chronic pain management program is consistent with TEX. LABOR CODE ANN. §408.021.

## ORDER

**IT IS ORDERED** that the preauthorization request of_____ for a chronic pain management program is granted.

**Signed this 21st day of February, 2003.**

_____

**GARY W. ELKINS**
**ADMINISTRATIVE LAW JUDGE**
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**